

STATE OF TEXAS                   §  
   §  
COUNTY OF FORT BEND       §

**AGREEMENT FOR CONSTRUCTION MATERIALS TESTING**

THIS AGREEMENT is made and entered into by and between Fort Bend County, (hereinafter "County"), a body corporate and politic under the laws of the State of Texas, and The Murillo Company (hereinafter "Contractor"), a company authorized to conduct business in the State of Texas.

**WITNESSETH**

WHEREAS, County desires that Contractor provide professional construction materials testing for the Brandt Road Project No. 17310 under the 2017 Mobility Bond Program (hereinafter "Services") pursuant to SOQ 14-025; and

WHEREAS, County has determined Contractor is the most highly qualified provider of the desired Services on the basis of demonstrated competence and qualifications, and County and Contractor have negotiated to reach a fair and reasonable amount of compensation for the provision of such Services, as required under Chapter 2254 of the Texas Government Code; and

WHEREAS, Contractor represents that it is qualified and desires to perform such services.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the parties agree as follows:

**AGREEMENT**

**Section 1. Scope of Services**

Contractor shall render the professional engineering services as described in Contractor's Proposal dated February 25, 2021, attached hereto as Exhibit A, and incorporated herein for all purposes.

**Section 2. Personnel**

2.1 Contractor represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for the timely performance of the Scope of Services required under this Agreement and that Contractor shall furnish and maintain, at its own expense, adequate and sufficient personnel, in the opinion of County, to perform the Scope of Services when and as required and without delays.

2.2 All employees of Contractor shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Contractor who, in the opinion of County, is incompetent or by his conduct becomes detrimental to the project shall, upon request of County, immediately be removed from association with the project.

### **Section 3. Compensation and Payment**

3.1 Contractor's fees shall be calculated at the rates set forth in the attached Exhibit A. The Maximum Compensation for the performance of Services within the Scope of Services described in Exhibit A is eighty-five thousand seven hundred thirty-four dollars and no/100 (\$85,734.00) as set forth in Exhibit A. In no case shall the amount paid by County under this Agreement exceed the Maximum Compensation without a written agreement executed by the parties.

3.2 All performance of the Scope of Services by Contractor including any changes in the Scope of Services and revision of work satisfactorily performed will be performed only when approved in advance and authorized by County.

3.3 County will pay Contractor based on the following procedures: Upon completion of the tasks identified in the Scope of Services, Contractor shall submit to County staff person designated by the County Engineer, one (1) electronic (pdf) copy of the invoice showing the amounts due for services performed in a form acceptable to County. County shall review such invoices and approve them within 30 calendar days with such modifications as are consistent with this Agreement and forward same to the Auditor for processing. County shall pay each such approved invoice within thirty (30) calendar days. County reserves the right to withhold payment pending verification of satisfactory work performed.

### **Section 4. Limit of Appropriation**

4.1 Contractor clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of eighty-five thousand seven hundred thirty-four dollars and no/100 (\$85,734.00) specifically allocated to fully discharge any and all liabilities County may incur.

4.2 Contractor does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Contractor may become entitled to and the total maximum sum that County may become liable to pay to Contractor shall not under any conditions, circumstances, or interpretations thereof exceed eighty-five thousand seven hundred thirty-four dollars and no/100 (\$85,734.00).

### **Section 5. Time of Performance**

Time for performance of the Scope of Services under this Agreement shall begin with receipt of the Notice to Proceed and end no later than December 31, 2022. Contractor shall complete the tasks described in the Scope of Services, within this time or within such additional time as may be extended by the County.

### **Section 6. Modifications and Waivers**

6.1 The parties may not amend or waive this Agreement, except by a written agreement executed by both parties.

6.2 No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition.

6.3 The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.

## **Section 7. Termination**

7.1 Termination for Convenience – County may terminate this Agreement at any time upon forty-eight (48) hours written notice.

### **7.2 Termination for Default**

7.2.1 County may terminate the whole or any part of this Agreement for cause in the following circumstances:

7.2.1.1 If Contractor fails to perform services within the time specified in the Scope of Services or any extension thereof granted by the County in writing;

7.2.1.2 If Contractor materially breaches any of the covenants or terms and conditions set forth in this Agreement or fails to perform any of the other provisions of this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in any of these circumstances does not cure such breach or failure to County's reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from County specifying such breach or failure.

7.2.2 If, after termination, it is determined for any reason whatsoever that Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the County in accordance with Section 7.1 above.

7.3 Upon termination of this Agreement, County shall compensate Contractor in accordance with Section 3, above, for those services which were provided under this Agreement prior to its termination and which have not been previously invoiced to County. Contractor's final invoice for said services will be presented to and paid by County in the same manner set forth in Section 3 above.

7.4 If County terminates this Agreement as provided in this Section, no fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to Contractor.

## **Section 8. Ownership and Reuse of Documents**

All documents, data, reports, research, graphic presentation materials, etc., developed by Contractor as a part of its work under this Agreement, shall become the property of County upon completion of this Agreement, or in the event of termination or cancellation thereof, at the time

of payment under Section 3 for work performed. Contractor shall promptly furnish all such data and material to County on request.

#### **Section 9. Inspection of Books and Records**

Contractor will permit County, or any duly authorized agent of County, to inspect and examine the books and records of Contractor for the purpose of verifying the amount of work performed under the Scope of Services. County's right to inspect survives the termination of this Agreement for a period of four years.

#### **Section 10. Insurance**

10.1 Prior to commencement of the Services, Contractor shall furnish County with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. Contractor shall provide certified copies of insurance endorsements and/or policies if requested by County. Contractor shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services. Contractor shall obtain such insurance written on an Occurrence form (or a Claims Made form for Professional Liability insurance) from such companies having Best's rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:

10.1.1 Workers' Compensation insurance. Substitutes to genuine Workers' Compensation Insurance will not be allowed.

10.1.2 Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.

10.1.3 Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.

10.1.4 Business Automobile Liability insurance with a combined Bodily Injury/Property Damage limit of not less than \$1,000,000 each accident. The policy shall cover liability arising from the operation of licensed vehicles by policyholder.

10.1.5 Professional Liability insurance may be made on a Claims Made form with limits not less than \$1,000,000.

10.2 County and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation and Professional Liability. All Liability policies including Workers' Compensation written on behalf of Contractor shall contain a waiver of subrogation in favor of County and members of Commissioners Court.

10.3 If required coverage is written on a claims-made basis, Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time that work under the Agreement is completed.

#### **Section 11. Indemnity**

**CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS COUNTY AGAINST LOSSES, LIABILITIES, CLAIMS, AND CAUSES OF ACTION, INCLUDING THE REIMBURSEMENT OF COUNTY'S REASONABLE ATTORNEYS FEES IN PROPORTION TO CONTRACTOR'S LIABILITY, ARISING FROM ACTIVITIES OF CONTRACTOR, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, INTENTIONAL TORT, ERROR, OR OMISSION OF CONTRACTOR OR ANY OF CONTRACTOR'S AGENTS, SERVANTS OR EMPLOYEES.**

#### **Section 12. Confidential and Proprietary Information**

12.1 Contractor acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to County. Any and all information of any form obtained by Contractor or its employees or agents from County in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Contractor) publicly known or is contained in a publicly available document; (b) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (c) is independently developed by employees or agents of Contractor who can be shown to have had no access to the Confidential Information.

12.2 Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to County hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use its best efforts to assist County in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Contractor shall advise County immediately in the event Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Contractor will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or Contractor against any such person. Contractor agrees that, except as directed by County, Contractor will not at any time during

or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at County's request, Contractor will promptly turn over to County all documents, papers, and other matter in Contractor's possession which embody Confidential Information.

12.3 Contractor acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to County that is inadequately compensable in damages. Accordingly, County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of County and are reasonable in scope and content.

12.4 Contractor in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.

12.5 Contractor expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by Consultant shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed.

### **Section 13. Independent Contractor**

13.1 In the performance of work or services hereunder, Contractor shall be deemed an independent contractor, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of contractor or, where permitted, of its subcontractors.

13.2 Contractor and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of County and shall not be entitled to any of the privileges or benefits of County employment.

### **Section 14. Notices**

14.1 Each party giving any notice or making any request, demand, or other communication (each, a "Notice") pursuant to this Agreement shall do so in writing and shall use one of the following methods of delivery, each of which, for purposes of this Agreement, is a writing: personal delivery, registered or certified mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid).

14.2 Each party giving a Notice shall address the Notice to the receiving party at the address listed below or to another address designated by a party in a Notice pursuant to this Section:

County:	Fort Bend County Engineering Department Attn: County Engineer 301 Jackson Street Richmond, Texas 77469
With a copy to:	Fort Bend County Attn: County Judge 401 Jackson Street, 1 <sup>st</sup> Floor Richmond, Texas 77469
Contractor:	The Murillo Company 10325 Landsbury Drive, Suite 400 Houston, Texas 77099

14.3 A Notice is effective only if the party giving or making the Notice has complied with subsections 14.1 and 14.2 and if the addressee has received the Notice. A Notice is deemed received as follows:

14.3.1 If the Notice is delivered in person, or sent by registered or certified mail or a nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt.

14.3.2 If the addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver.

#### **Section 15. Compliance with Laws**

Contractor shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required by County, Contractor shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

#### **Section 16. Standard of Care**

Contractor represents shall perform the Services to be provided under this Agreement with the professional skill and care ordinarily provided by competent engineers practicing under the same or similar circumstances and professional license. Further, Contractor shall perform the Services as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer.

**Section 17. Assignment**

17.1 Neither party may assign any of its rights under this Agreement, except with the prior written consent of the other party. That party shall not unreasonably withhold its consent. All assignments of rights are prohibited under this subsection, whether they are voluntarily or involuntarily, by merger, consolidation, dissolution, operation of law, or any other manner.

17.2 Neither party may delegate any performance under this Agreement.

17.3 Any purported assignment of rights or delegation of performance in violation of this Section is void.

**Section 18. Applicable Law**

The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity.

**Section 19. Successors and Assigns**

County and Contractor bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of the other party, in respect to all covenants of this Agreement.

**Section 20. Third Party Beneficiaries**

This Agreement does not confer any enforceable rights or remedies upon any person other than the parties.

**Section 21. Severability**

If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

**Section 22. Publicity**

Contact with citizens of Fort Bend County, media outlets, or governmental agencies shall be the sole responsibility of County. Under no circumstances whatsoever, shall Contractor release any material or information developed or received in the performance of the Services hereunder without the express written permission of County, except where required to do so by law.



**Section 23. Captions**

The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.

**Section 24. Conflict**

In the event there is a conflict between this Agreement and the attached exhibits, this Agreement controls.

**Section 25. Certain State Law Requirements for Contracts**

25.1 Agreement to Not Boycott Israel Chapter 2271 Texas Government Code: By signature below, Contractor verifies that if Contractor employs ten (10) or more full-time employees and this Agreement has a value of \$100,000 or more, Contractor does not boycott Israel and will not boycott Israel during the term of this Agreement.

25.2 Texas Government Code Section 2251.152 Acknowledgment: By signature below, Contractor represents pursuant to Section 2252.152 of the Texas Government Code, that Contractor is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under Section 806.051, Section 807.051 or Section 2253.153.

**Section 26. Human Trafficking**

BY ACCEPTANCE OF AGREEMENT, CONTRACTOR ACKNOWLEDGES THAT THE COUNTY IS OPPOSED TO HUMAN TRAFFICKING AND THAT NO COUNTY FUNDS WILL BE USED IN SUPPORT OF SERVICES OR ACTIVITIES THAT VIOLATE HUMAN TRAFFICKING LAWS.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts to be effective on the date signed by the last party hereto.

FORT BEND COUNTY

THE MURILLO COMPANY

\_\_\_\_\_  
KP George, County Judge

  
Authorized Agent – Signature

\_\_\_\_\_  
Date

Donna Murillo  
Authorized Agent – Printed Name


ATTEST:

E.V.P.  
Title

\_\_\_\_\_  
Laura Richard, County Clerk

4.23.2021  
Date

APPROVED:

  
\_\_\_\_\_  
J. Stacy Slawinski, P.E., County Engineer

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
Marcus D. Spencer, First Assistant County Attorney

#### AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$\_\_\_\_\_ to accomplish and pay the obligation of Fort Bend County under this contract.

\_\_\_\_\_  
Robert Ed Sturdivant, County Auditor

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# EXHIBIT A

February 25, 2021

Schaumburg & Polk, Inc.  
11767 Katy Freeway, Suite 900  
Houston, Texas 77079

Attn: Mr. Mark C. Dessens, P.E.

Re: Materials Testing Services – Revised 2  
Brandt Road Phase 1  
McCrary Road to Precinct Line Road  
Fort Bend County, Texas

We are pleased to submit our budgetary estimate to administer the Materials Testing and Inspection during construction for the above referenced project.

The estimated testing costs based upon information provided by Client, may vary due to construction schedules, weather, or additional testing requested. All invoices will be in accordance with the actual unit cost. All prices will remain valid for a period of six months.

All hourly work will be charged on a portal to portal basis from our laboratory. Overtime is billed at 1½ times the unit rate for hours worked in excess of 8 hours per day Monday thru Friday, all day Saturday, Sunday or Holidays. A minimum 24 hours advance notice of any desired material testing to be conducted is required. It is understood that our services are performed on a "CALL OUT BASIS." We will not be held responsible for any tests not performed in areas requiring testing, due to failure to notify this office.

Our laboratory maintains Professional Liability Insurance and meets the requirements of ASTM E-329, a recommended practice for Inspection and Testing Agencies for Concrete and Steel, as used in construction.

Thank you for this opportunity to submit this proposal for your consideration.

Respectfully submitted,



Rodney Larkin  
CMT Manager  
Texas Registration No. F-2911

### COST ESTIMATE

Description of Services	Unit Rate		Quantity		Total
Soils Testing					
Certified Technician	\$ 65.00	hour	480	hours	\$ 31,200.00
Technician, Non-Certified	\$ 43.00	hour	40	hours	\$ 1,720.00
Liquid & Plastic Limits	\$ 62.00	each	50	each	\$ 3,100.00
Percent Passing No. 200 Sieve	\$ 48.00	each	10	each	\$ 480.00
OMD Standard Compaction	\$ 204.00	each	10	each	\$ 2,040.00
OMD Standard Compaction, Treated	\$ 225.00	each	4	each	\$ 900.00
Nuclear Density Equipment Rental	\$ 40.00	day	65	day	\$ 2,600.00
Vehicle Charge	\$ 60.00	trip	75	trip	\$ 4,500.00
				Sub-Total	\$ 46,540.00
Asphalt					
Asphalt Technician	\$ 65.00	hour	48	hours	\$ 3,120.00
Asphaltic Mix Design Review	\$ 250.00	hour	1	hours	\$ 250.00
Extraction Tests	\$ 280.00	each	6	each	\$ 1,680.00
Specific Gravity	\$ 82.00	each	6	each	\$ 492.00
Asphalt Content	\$ 92.00	each	6	each	\$ 552.00
Asphaltic Concrete Specimens Molding	\$ 72.00	each	6	each	\$ 432.00
Hveem Stability	\$ 108.00	each	6	each	\$ 648.00
Nuclear Gauge	\$ 40.00	day	6	day	\$ 240.00
Vehicle Charge	\$ 60.00	trip	6	trip	\$ 360.00
				Sub-Total	\$ 7,774.00
Concrete Testing					
Certified Technician	\$ 65.00	hour	208	hours	\$ 13,520.00
Cylinder Test (ASTM C-39)	\$ 20.00	hour	248	hours	\$ 4,960.00
Concrete Pavement Cores	\$ 70.00	each	14	each	\$ 980.00
Cap & Test Cores	\$ 30.00	each	14	each	\$ 420.00
Vehicle Charge	\$ 60.00	trip	26	trip	\$ 1,560.00
				Sub-Total	\$ 21,440.00
Professional Services					
Project Engineer, P.E. Hours	\$ 250.00	hour	20	hours	\$ 5,000.00
CMT Department Manager Hours	\$ 115.00	hour	12	hours	\$ 1,380.00
Administrative / Clerical Hours	\$ 60.00	hour	60	hours	\$ 3,600.00
				Sub-Total	\$ 9,980.00
				TOTAL	\$ 85,734.00

# THE MURILLO COMPANY

Geotechnical & Environmental Consultants

10325 Landsbury, Suite 400 • Houston, Texas 77099-4299 • (281) 933-9702 • Fax (281) 933-1051

## AGREEMENT FOR MATERIALS TESTING SERVICES

### THE AGREEMENT

This AGREEMENT is by and between THE MURILLO COMPANY, ("CONSULTANT") and SCHAUMBURG & POLK, INC. ("CLIENT"). This AGREEMENT between the parties listed consist of the terms and condition set forth here, identified as Material Testing Services Proposal dated February 25, 2021, for the following project; Brandt Road Phase 1, McCrary Road to Precinct Line Road, Fort Bend County, Texas, as outlined by the Materials Testing Service Proposal which is attached to this AGREEMENT. Together these elements will constitute the entire AGREEMENT.

### TERMS AND CONDITIONS

CONSULTANT agrees to provide Material Testing and other technical services for the CLIENT in accordance with the rates set forth in this Agreement for a fee of \$ 85,734.00.

### ARTICLE 1. SERVICES

Consultant will:

- 1.1 Act for CLIENT in a professional manner using that degree of care and skill ordinarily exercised by and consistent with the standards of competent Geotechnical consultants practicing in the locality of the project site.
- 1.2 Provide those services requested of CONSULTANT and for which CONSULTANT is adequately staffed and equipped to perform.
- 1.3 Perform all technical services under the direction of a Registered Professional Engineer and in accordance with the basic requirements of the appropriate Standards of The American Society of Testing and Materials where applicable. Alternate standards mutually agreeable to the CONSULTANT and CLIENT may also be used.
- 1.4 Consider all reports to be the confidential property of CLIENT, and distribute reports only to those persons, organizations or agencies specifically designated in writing by CLIENT or his authorized representative.
- 1.5 Retain records relating to the services performed for a period of five years following submission of the report, during which period the records will be made available to CLIENT at all reasonable times and fees in effect at the time of the request.

### ARTICLE 2. CLIENT'S RESPONSIBILITIES

CLIENT or his authorized representative will:

- 2.1 Notify CONSULTANT a minimum of 24 hours in advance of any desired material testing, and must specify what testing CLIENT desires to be conducted. It is the CLIENT'S responsibility to have CONSULTANT notified of any desired testing. CLIENT acknowledges that CONSULTANT'S services are performed on a "call out basis" and CONSULTANT is not responsible if testing is not performed due to CONSULTANT not being timely notified of the time and nature of testing desired.
- 2.2 Provide CONSULTANT full information regarding conceptual design data related to Materials Testing Services considerations for the project, locations of existing underground utilities and any knowledge of past history which suggests special consideration, performance requirements for the proposed project which may deviate from the norm, changes in aforementioned considerations as the project progresses through construction completion which may relate to Materials Testing considerations for the project, and other information for the proper performance of CONSULTANT. CONSULTANT shall be entitled to rely upon the accuracy and completeness of all such information provided by the CLIENT.
- 2.3 Furnish right of entry onto the project site for CONSULTANT to make the necessary field studies. CONSULTANT will endeavor to preserve the land but make no guarantee to restore the site to its original condition unless a separate agreement is made for such restoration, in which case CONSULTANT shall add the cost of restoration to the fee for the project.
- 2.4 Designate in writing those responsible persons, organizations or agencies to be contacted in the event conditions are revealed during the execution of CONSULTANT'S study that would require possible alteration of the study or would potentially influence design that is proceeding in parallel with the study. The responsible party shall have authority to issue change order to the contract.
- 2.5 Guarantees to CONSULTANT that the CLIENT is not a minor, that the CLIENT otherwise has the legal capacity to enter into this contract, or if a corporation that the signatory is duly authorized to enter into this contract and bind the corporation, and that sufficient monies are available to fund CONSULTANT'S fee.

# **THE MURILLO COMPANY**

## **Geotechnical & Environmental Consultants**

10325 Landsbury, Suite 400 • Houston, Texas 77099-4299 • (281) 933-9702 • Fax (281) 933-1051

### **ARTICLE 3. GENERAL CONDITIONS**

3.1 CONSULTANT, by the performance of services covered hereunder, does not in any way assume, abridge or abrogate any of those duties, responsibilities or authorities with regard to the project customarily vested in the project architects, design engineers, or any other design agencies or authorities.

3.2 CONSULTANT shall not be responsible for acts or omissions of any party or parties involved in the design of the project or the failure of any contractor or subcontractor to construct any item on the project in accordance with recommendations contained in any correspondence or verbal recommendation issued by CONSULTANT.

3.3 This AGREEMENT may be terminated by either party on receipt of written notice or by mutual agreement. If this AGREEMENT is terminated by either party, CONSULTANT shall be paid in full for all services performed through the termination date, and the CLIENT shall then be provided with a complete report of the results of tests and analysis conducted prior to termination.

3.4 CLIENT may not delegate, assign, sublet or transfer its duties or interest in this AGREEMENT without the written consent of CONSULTANT. CONSULTANT may delegate, assign, sublet or transfer its duties hereunder without the written consent of CLIENT, but CONSULTANT shall be made responsible for the completion of its duties. CONSULTANT may not delegate, assign or transfer its interest in this AGREEMENT without the written consent of CLIENT.

3.5 In view of the relative risks and rewards of this project, CLIENT agrees to limit any and all liability of CONSULTANT for damages including costs of defense and expenses, on account of any design defect, error, omissions, professional negligence, breach of contract or breach of warranty to the sum of \$50,000 or the amount of CONSULTANT'S fee, whichever is greater.

### **ARTICLE 4. INSURANCE**

4.1 CONSULTANT shall secure and maintain throughout the full period of this AGREEMENT insurance to protect it from claims under applicable Workmen's Compensation Acts and from claims for bodily injury, death or property damage as may arise from the performance of services under this AGREEMENT. CONSULTANT will, upon request, file certificate of such insurance coverage with CLIENT or his authorized representative.

4.2 No insurance, of whatever kind or type, which may be carried by CONSULTANT, is to be considered as in any way limiting the contractor's or subcontractor's responsibility for damages resulting from his operations or for furnishing work and material to the project. CLIENT agrees to include, or cause to be included in the project's construction contract requirements for insurance coverage and performance bonds to be secured and maintained by the project contractor as CLIENT deems adequate to indemnify CLIENT, CONSULTANT, and other concerned parties, against claims for damages and to insure compliance of work performance and materials with project requirements.

### **ARTICLE 5. CONSEQUENTIAL DAMAGES**

Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Client nor the Consultant, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation and any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the Client and the Consultant shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project.

### **ARTICLE 6. PAYMENT**

6.1 CLIENT will pay CONSULTANT for services and expenses in accordance with the attached fee schedule. CONSULTANT'S invoices will be presented at the completion of its work or monthly and will be due and payable upon receipt.

6.2 CONSULTANT shall be paid in full for all services under the AGREEMENT, including any overruns of CLIENT'S contract of any unforeseen need for CONSULTANT'S services exceeding original contract requirements. Payment for such service shall be made irrespective of any claim by CLIENT for an offset or credit. Any such claim shall in no respect delay payment of fees for services performed by CONSULTANT.

# THE MURILLO COMPANY

Geotechnical & Environmental Consultants

10325 Landsbury, Suite 400 • Houston, Texas 77099-4299 • (281) 933-9702 • Fax (281) 933-1051

## ARTICLE 7. EXTENT OF AGREEMENT

The AGREEMENT, including these terms and conditions, represents the entire agreement between CLIENT and CONSULTANT and supersedes all prior negotiations, representations or agreements, written or oral. The AGREEMENT may be amended only in writing and signed by CLIENT and CONSULTANT.

## ARTICLE 8. APPLICABLE LAW

8.1 The AGREEMENT shall be governed by the laws of the State of Texas.

8.2 The AGREEMENT is performable in whole or in part in Harris County, Texas.

## ARTICLE 9. MEDIATION

Prior to the initiation of any legal proceedings, the parties agree to submit all claims, disputes or controversies arising out of or in relation to the interpretation, application or enforcement of this AGREEMENT to non-binding mediation. Mediation shall be conducted under the auspices of the American Arbitration Association or such other mediation services or mediator upon which the parties agree. The party seeking to initiate mediation shall do so by submitting a formal written request to the other party to this AGREEMENT. This ARTICLE shall survive completion or termination of this AGREEMENT, but under no circumstances shall either party call for mediation of any claim or dispute arising out of this AGREEMENT after such period of time as would normally bar the initiation of legal proceedings to litigate such claim or dispute under laws of the State of Texas.

If any of the provision contained in this AGREEMENT are held illegal, invalid, or unenforceable, the enforce ability of the remaining provision will not be impaired. Limitation of liability and indemnities will survive termination of the AGREEMENT for any cause.

The Parties have read the foregoing, understand completely the terms, and willingly enter into this AGREEMENT which will become effective on the date signed by the CLIENT below.

\_\_\_\_\_  
CLIENT

\_\_\_\_\_  
THE MURILLO COMPANY  
CONSULTANT

\_\_\_\_\_  
By

\_\_\_\_\_  
By: Rodney Larkin

\_\_\_\_\_  
Title

\_\_\_\_\_  
CMT Manager  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
February 25, 2021  
Date